Commonwealth
of Massachusetts

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*Office of Campaign and Political Finance*
*One Ashburton Place, Room 411*
*Boston, MA 02108*

Advisory Opinion

September 9, 2003
AO-03-04

Daniel B. Winslow, Esq.
Chief Legal Counsel
Commonwealth of Massachusetts
Executive Department
State House
Boston, MA 02113

Re: Payroll Deductions for Political Contributions

Dear Mr. Winslow:

This letter is in response to your request for an opinion as to whether the state's administration of a payroll deduction plan allowing union member employees to contribute to union political action committees ("PAC"s) is consistent with the campaign finance law, M.G.L. c. 55, and Anderson v. City of Boston, 37 Mass. 178 (1978), the Supreme Judicial Court opinion from which the prohibition against using public resources for a political purpose is derived.

You have correctly noted that OCPF has previously addressed this issue in two advisory opinions. In AO-95-29, this office advised the City of Fall River that it should not implement a discretionary payroll deduction plan allowing public employees to contribute to a union PAC because doing so would involve the use of government resources for a political purpose. That opinion acknowledged, however, that it was not uncommon for payroll deduction plans for PAC contributions to be included in collective bargaining agreements between labor unions and employers, and intimated that the implementation of such a plan might be permissible under those circumstances. If that were to be the case, the opinion stated:

> [T]he plan would also have to comply with sections 13 through 15 of chapter 55 of the General Laws. Specifically, the plan could not involve: (1) the solicitation or receipt of contributions in buildings occupied for municipal (or other governmental) purposes; (2) the solicitation or receipt of contributions by any person employed by the commonwealth or any of its subdivisions; or (3) the delivery or acceptance of any contribution by one person in the service of the commonwealth or any of

> its subdivisions from any other person in the service of the commonwealth or one of its subdivisions.

Thereafter, the City of Fall River and the union did include the PAC payroll deduction plan in a collective bargaining agreement. The union agreed to pay the costs necessary to administer the plan and offered to include that fact in the written agreement if necessary. Once again, the city approached OCPF for advice.

In AO-97-01, OCPF found that the "prohibition [against using public resources for a political purpose] would seem to be applicable even if resources are provided pursuant to a collective bargaining agreement." As such, the office advised that there were two requirements that should be met prior to the city's implementation of the payroll deduction plan: (1) the collective bargaining agreement had to require the municipality to administer the plan, and (2) to avoid the use of public resources for a political purpose, the PAC had to reimburse the municipality for all administrative or other costs associated with the implementation of the payroll deduction plan.

You have indicated that several state agencies presently administer agreements that allow union members to make contributions to their unions' political action committees via payroll deduction. According to your letter, each agency implements these plans differently, but you have provided examples that involve agency personnel presenting new employees with PAC solicitations in the workplace in the course of the orientation process. In addition, union representatives are apparently sometimes provided a formal opportunity as part of the orientation process to discuss union issues, including PAC contributions, with new employees in the workplace.

According to your letter, some collective bargaining agreements require the state to provide the union treasurer with records of the contributors in addition to the funds. You stated that the union PACs are not currently reimbursing the Commonwealth for the administrative costs associated with the payroll deduction plans, and maintain that the Executive Department would not know how to calculate the fair market value of the state's efforts associated with the management of the plans.

You have asked:

> how the existence of a collective bargaining agreement mandating a particular payroll deduction plan can justify the legality of such plan under Chapter 55 and Anderson if the plan (i) permits particular state employees to solicit other state employees for political purposes; (ii) requires [the Executive Office for Administration and Finance] to instruct other state employees to administer as part of their official state duties a payroll deduction plan that benefits a PAC; and (iii) involves solicitation activities that occur in the workplace and other administrative activities that consume state resources.

These concerns relate to two separate issues: (1) the extent to which public resources may be used to administer a payroll deduction plan for union PAC contributions, and (2) the solicitation of political contributions by public employees in the workplace.

QUESTION

As part of a collective bargaining agreement, may the Commonwealth use public resources to administer a payroll deduction plan for union PAC contributions?

ANSWER

Yes, if the Commonwealth is required to implement the plan pursuant to a negotiated collective bargaining agreement and if the Commonwealth is reimbursed for additional costs associated with the administration of the plan.[1] The use of public resources under these circumstances would be for the purpose of fulfilling the state's contractual obligation, not primarily to provide a benefit to the PAC.

DISCUSSION

In Anderson v. City of Boston, the Supreme Judicial Court held that there was no authority in the campaign finance law for a municipality to finance a ballot question campaign with tax revenues. See 376 Mass. at 185-186. As the court explained, the Commonwealth "has a substantial, compelling interest in assuring the fairness of elections and the appearance of fairness in the electoral process." Id. at 193. It found the legislature properly sought to accomplish this goal by strictly excluding government entities from involvement in the political process, and ruled that "the State government and its various subdivisions should not use public funds to instruct the people, the ultimate authority, how they should vote." Id. at 194-195.

In conjunction with this opinion, OCPF consistently advises that government entities should not use public resources for political purposes. See IB-91-01. This encompasses all activity intended to influence the results of a state or local election, including expenditures to promote or oppose candidates, political parties, PACs, or ballot questions. In order to determine whether a particular governmental expenditure complies with Anderson, it is necessary to look to the primary purpose of the government agency making the expenditure. See Weld for Governor v. Director of the Office of Campaign and Political Finance, 407 Mass. 761, 770-1 (1990) (the determination of whether something is an "expenditure" or "contribution" for the purposes of the campaign finance law depends on the primary purpose of the activity).

In the situations you have described, it appears that the utilization of public resources by state agencies to process union PAC payroll deductions, and in some instances, provide records of the transactions, is primarily intended to fulfill the state's obligation under existing negotiated collective bargaining agreements, not to influence an election or promote the unions' PACs. Provision of payroll deduction services under those circumstances would not involve improper political expenditures according to the purpose-based test articulated by the Weld court. As recommended in AO-97-01, however, the Commonwealth should be reimbursed by the PACs for the additional costs resulting from its administration of the plans in order to ensure compliance with Anderson.[2] Factors to be considered in assessing the additional value of the services to be reimbursed by the PACs include, but are not

[1] Although the contribution limit from an individual to a PAC is $500 per year, no more than $50 may be provided by means of payroll deduction. This is because M.G.L. c. 55, § 9 requires that aggregate contributions exceeding $50 be by check, credit card or other "written instrument."

[2] If the Commonwealth is reimbursed by a union, instead of the PAC, for the costs associated with its PAC's payroll deduction plan, the amount paid would be an in-kind contribution from the union to the PAC subject to IB-88-01. This option would not be available, however, for reimbursements on behalf of people's committees (a type of PAC), if any, because such committees may only accept contributions from individuals. See M.G.L. c. 55, § 1 and AO-02-25.

limited to, the amount of staff time dedicated to the administration of a plan, the cost of office supplies and equipment used, and any out-of-pocket expenses.

QUESTION

May state agency personnel or public employee union representatives enroll new employees, who are union members, in voluntary payroll deduction plans for PAC contributions in the workplace in the course of the orientation process?

ANSWER

No. The fact that the Commonwealth's administration of a payroll deduction plan for PAC contributions would comply with Anderson, does not mean that public resources may be used to *solicit* political contributions. Likewise, all political solicitations made to employees by public employee PACs, including those made through payroll deduction plans, must conform to various provisions of M.G.L. c. 55, specifically §§ 13-17, which, among other things, restrict political fundraising by public employees and in buildings occupied for governmental purposes. See AO-95-29.

DISCUSSION

Section 13 of the campaign finance law prohibits the solicitation or receipt of political contributions by appointed public employees. Section 14 of the campaign finance law provides that no person, whether public employee or otherwise, shall "in any building occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value" for political campaign purposes. This applies to both verbal and written solicitations in the workplace. See AO-01-20 (advising that the time and place of the receipt of a written solicitation determines where the solicitation takes place). In addition, Sections 16 through 17 of the campaign finance law protect public employees from being forced to contribute to or otherwise support a political candidate or committee.

The use of agency personnel to solicit PAC contributions from new employees in the course of the orientation process, as well as allowing union representatives to solicit or receive political contributions in the workplace, entail (1) the use of public resources to help the union PACs raise money, which is presumably not part of any collective bargaining agreements; (2) political solicitations by public employees; and (3) raising funds in buildings occupied for governmental purposes. Moreover, some agency personnel could be placed in a position of providing political services to the PACs against their will. Because these practices are contrary to Anderson and the sections of the campaign finance law listed above, they must be avoided. Compare AO-02-04 (advising that for these same reasons it would be improper for a municipal employee to post a fundraising announcement on behalf of a ballot question committee on the local cable channel).

Instead, as with all political solicitation, solicitations for PAC contributions made in conjunction with a payroll deduction plan must be made (whether orally, in writing or by e-mail) outside of the workplace or any other government building by a PAC's treasurer, a union member who is not employed by the Commonwealth or who is retired from public service, or any other union or PAC agent who is not an appointed public employee. See AO-97-07 (advising that if a PAC is composed of public employees, members may not solicit prospective new members; solicitation must be done by retirees or other persons who are not public employees). For example, a union could have its treasurer contact new employees about its PAC payroll deduction plan by mail.

After the paperwork authorizing the deduction has been completed in a manner consistent with M.G.L. c. 55, the documents may be returned by the union to the appropriate agency staff member for processing. These employees may carry out the clerical work subsequently required to administer the deduction plan without implicating Section 13 or 14 because such functions unrelated to the actual request for funds do not constitute the solicitation or receipt of political contributions. See AO-88-25 (advising that a public employee may perform clerical tasks such as data entry in connection with political fundraising).

This opinion is issued on the basis of representations in your letter and is solely within the context of the campaign finance law.[3] I encourage you to contact us in the future if you have further questions about this opinion or any other aspect of the campaign finance law.

Sincerely,

Michael J. Sullivan
Director

MJS:bp

[3] Consequently, this opinion is limited to payroll deduction plans for *political contributions* administered as part of a negotiated collective bargaining agreement. The propriety of other payroll deduction plans, such as deductions for union dues or charitable contributions, or other services to union members provided using public resources are not within OCPF's jurisdiction.